

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5980 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANSUBEN M MAKWANA

Versus

HALVAD NAGAR PANCHAYAT

Appearance:

MS PAURAMI B SHETH for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/12/98

ORAL JUDGEMENT

Rule. Ms. Mandavia waives service of the rule on behalf of respondent. In the facts and circumstances of this case, the matter is taken up for final hearing right today.

2. The petitioner has come with the case that she was initially appointed as a Sweeper on daily wages on 1.12.78. She was relieved with other co-workers

subsequently for which an industrial dispute was raised by the co-workers, which was decided on 15.3.91 and the References were rejected. Even after the rejection of the References with the intervention of the Union, respondent agreed to reinstate certain Badli workers but the petitioner was not reinstated. The petitioner then challenged this action of the respondent through Special Civil Application No.7110/91 on 4.10.91 and this Special Civil Application No.7110/91 was decided on 15.8.97 directing the respondent to consider the petitioner's case while keeping in mind the case of others. Thereafter, the petitioner was taken back on duty as daily wager sweeper on 21/27-11-91 and she claims that she has been working since then for a period of about 25 days in a month as she was made to work at the time of her initial appointment. It is also the case of the petitioner that during the pendency of the aforesaid Special Civil Application No.7110/91 the respondent had absorbed many Badli workers, who were junior to the petitioner. The workers, who had been left out, preferred Special Civil Application No.5593/91 and this Special Civil Application No.5593/91 has been allowed by a single Bench of this Court on 13.11.98. Last three paragraphs of this order dt.13.11.98 passed in Special Civil Application No.5593/91 are reproduced as under:-

"I have considered the submissions made on behalf of the parties. As the petitioner and Ashu Mohan and others moved the Industrial Tribunal and that reference was decided by the award dated 19.8.1997. The petitioners were taken back into service. But Ashu Mohan was not taken back in service and hence Special Civil Application No.7110/91 was filed and that petition was disposed of by this Court by the order dated 15.8.1997. The matter has already been considered elaborately in the case of D.C.Wadhwana vs. Director General of Police, and considering the various Government resolutions and some orders of this court the order was passed and the Government of Gujarat was directed to absorb and regularise all the part time sweepers who are working in different department of the Government as full time sweepers in the cadre of IV employees within three months.

Considering the fact that the petitioners are sweepers belonging to downtrodden class, and decision in the case of D.C. Wadhwana (Supra) and in order to avoid multiplicity of the litigations I think it proper to decide this petition directing the respondent No.1 Nagar Panchayat to absorb and regularise the petitioners as full time sweepers in the cadre of Class IV employees

from the date of this order.

Accordingly, this petition is allowed and the respondents are directed to absorb and regularize the petitioners as full time sweepers in the cadre of Class IV employees from the date of this order. Rule is made absolute to the above extent, with no order as to costs."

3. The petitioner's case is that her case is exactly identical to the case of the petitioners in Special Civil Application No.5593/91 and, therefore, she is entitled to the same relief. It has also been stated by the petitioner that there are about 10 vacancies on permanent posts of Sweepers and the same are likely to be filled up by the respondents. All that has been submitted on behalf of the respondent represented through Ms. Madavia is that there are 36 sanctioned posts and only one vacancy is available as 35 posts have already been filled up.

4. In the facts and circumstances of this case, it is ordered that in case any person of service period shorter than the petitioner has already been absorbed, she may also be absorbed from the due date and in case no person with a length of service shorter than the petitioner has been absorbed, the respondent shall consider the case of the petitioner for absorption according to her length of service as and when the vacancy is available for her absorption according to her turn, but till then she will not be discontinued from the service and her status as obtaining at present shall be maintained. On availability of the vacancy against which the petitioner is found to be entitled for absorption, appropriate orders with regard to her absorption shall be passed and she will be regularised in the service as a full time sweeper in the cadre of Class IV employee. This Special Civil Application is accordingly allowed. Rule is made absolute. No order as to costs.